

SUPPLEMENTAL AGREEMENT

[37]

Between His Majesty the King and the Grand Trunk Pacific Railway Company.

This agreement made this day of 1904.

BETWEEN :

His Majesty the King, acting in respect of the Dominion of Canada and herein represented and acting by the Honourable Henry Robert Emmerson, Minister of Railways and Canals,

of the first part

AND

the Grand Trunk Pacific Railway Company,

of the second part.

Whereas a contract bearing date the twenty-ninth day of July, 1903, was made and entered into between His Majesty the King, of the first part, and Sir Charles Rivers Wilson and others, acting on behalf of the said Grand Trunk Pacific Railway Company, and providing, upon the terms and conditions in the said contract mentioned and set forth, for the construction and operation of the line of railway therein described;

And whereas the said Contract was afterwards confirmed by an Act of the Parliament of Canada, Chapter seventy-one of the Statutes of 1903, known as "The National Transcontinental Railway Act;"

And whereas the parties hereto have agreed, subject to ratification by the Parliament of Canada, to make certain modifications of the said Contract.

Now therefore this agreement witnesseth, that the said parties have contracted and agreed with each other as follows :—

1. Notwithstanding anything in the said Contract contained, the time for completion of the western division of the railway shall be and the same is hereby extended to the first day of December, A.D. 1911, and the tenth paragraph of the said Contract is amended accordingly and by inserting the word 'strikes' after the word 'floods' in the seventh line thereof.

2. Notwithstanding anything contained in the thirteenth and twenty-ninth paragraphs of the said Contract, the company shall, when it shall have completed the construction of the said Western Division in accordance with the terms of the said Contract as hereby amended, and shall have supplied rolling stock to the amount of fifteen million dollars (\$15,000,000), if the Eastern Division shall not then have been constructed and completed by the Government, be entitled to the return of the deposit made under the twelfth paragraph of the said contract, or any part thereof which may then remain unforfeited in the hands of the Government under the terms of the said

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Contract; and the company shall also be entitled to have the guarantee of the Government endorsed upon the said bonds issued in respect of the Western Division, pursuant to paragraph twenty-nine of the said Contract; and if it is shown to the satisfaction of the Government that the Western Division will be completed and rolling stock to the said amount of fifteen million dollars (\$15,000,000) supplied before the construction and completion of the Eastern Division and that the application of the said deposit will enable the company to so complete the Western Division and supply rolling stock to the said amount and that the same will be so supplied, the said deposit shall be released by the Government in such instalments as may from time to time be agreed upon.

Provided, however, that, of the said rolling stock to the amount of fifteen million dollars (\$15,000,000), rolling stock to the amount of five million dollars (\$5,000,000), to the satisfaction of the Government, shall then have been marked in the manner provided by the twenty-second paragraph of the said contract, ready to be assigned to the Eastern Division under the said paragraph upon its completion and to serve all the purposes in respect of the whole of the said Contract intended to be served by the five million dollars (\$5,000,000) worth of rolling stock in the said twenty-second paragraph mentioned.

3. Pending the completion of the Eastern Division by the Government, the company shall be entitled to lease from the Commissioners, to be appointed under the said Act, and to operate such portions of the said Eastern Division as may from time to time be completed, but upon such terms as may be agreed upon between the company and the said Commissioners, which terms are not to be more onerous than those of the lease of the whole division by the said Contract provided for, save in so far as may be necessary to give full effect to the paramount right of the said Commissioners next hereinafter mentioned, and subject always to the paramount right of the said Commissioners to use and operate the same without any payment of tolls or other compensation for such purposes as they may deem necessary or expedient in the execution of their commission.

4. The twenty-eighth paragraph of the said Contract is amended by striking thereout all the words following the word 'not' in the eighth line thereof and inserting instead thereof the words 'in respect of the prairie section exceed thirteen thousand dollars per mile of the mileage thereof, although seventy-five per centum of such cost of construction may have exceeded the said sum of thirteen thousand dollars per mile.'

5. Notwithstanding anything in the said Contract contained, the government may and shall, preserving always the proportions in the said Contract provided as between the prairie and mountain sections of the Western Division, implement for the purposes and subject otherwise to the provisions of the said Contract, its guarantee of the bonds of the said company to be issued for the cost of construction of the said Western Division, in such manner as may be agreed upon, so as to make the proceeds of the said bonds so as to be guaranteed a sum equal to seventy-five per centum of the cost of construction of the Western Division ascertained as provided in the said Contract, but not exceeding in respect of the prairie section, thirteen thousand dollars (\$13,000) per mile.

6. Notwithstanding anything in the said Contract contained, the government shall not exercise any rights in respect of possession, foreclosure or sale, by reason of non-payment of interest by the company under the thirty-first, thirty-second or thirty-third paragraphs of the said Contract, or under all or any of them, unless and until there shall be such default to the extent in the whole of a sum equal to five years of such interest, as the company is not relieved from payment of or permitted to defer or capitalize by the provisions of the said paragraphs.

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7. In case of such default being made by the company in respect of the interest of the said bonds so guaranteed by the government as would, under the provisions of the said Contract as amended hereby, entitle the government to take possession of the said Western Division or to foreclose or sell the same, the remedy of the government shall, notwithstanding anything in the said Contract contained, be the taking possession thereof by and through an agent or manager to be appointed as hereinafter provided, whose powers and duties shall be to manage and operate the said Western Division, to receive all the tolls and revenues thereof, to pay thereout working expenditure as defined by 'the Railway Act, 1903,' including the expenses of such management or agency, and to distribute the surplus tolls and revenue, after payment of such working expenditure, *pari passu* between the government or other holders of the bonds secured as provided by paragraph 35 (a) of the said Contract and guaranteed by the government and the holders of the bonds secured as provided by paragraph 35 (b) of the said Contract and guaranteed by the Grand Trunk Railway Company, in the proportion of seventy-five per centum of such surplus tolls or revenues to the holders of the former issue of the bonds and twenty-five per centum to the holders of the latter issue, and the mortgage to be prepared under the said paragraph 35 (a) shall contain appropriate provisions in that behalf. The said manager or agent is to be appointed by the government, with the concurrence of the company, or, if they are unable to agree, by a majority of the Supreme Court of Canada.

8. Should possession be taken as aforesaid, the right of the government to such possession shall terminate if and when the application of the proportion herein provided of the said surplus tolls and revenues shall have paid off all arrears of such interest.

9. Notwithstanding anything in the twenty-seventh paragraph of the said Contract contained, the Grand Trunk Railway Company shall not, after the acquisition of the twenty-five million dollars (\$25,000,000) of common stock therein mentioned (less shares held by directors, not exceeding one thousand), be prevented from making any such disposition of such common stock as the said Grand Trunk Railway Company may deem expedient, provided, however, that the said Grand Trunk Railway Company shall, during the delay mentioned in the said paragraph, continue to hold a majority of the said stock by such title as shall enable the said Grand Trunk Railway Company to control the policy of the company.

10. Paragraph twenty-one of the said Contract is amended by adding thereto the following clause:—

'Provided, further, that, in the event of the government determining to undertake the operation of the said Eastern Division, the company shall be entitled for a further period of fifty years to such running powers and haulage rights as may be necessary to continuity of operation between the said Western Division and other portions of the company's system and the Grand Trunk Railway system upon such terms as may from time to time be agreed upon, or as may from time to time, in case of failure so to agree, be determined in the manner provided by paragraph 24 (2) hereof, which is hereby made applicable to cases arising under this paragraph.'

11. In case, during the currency of the lease of the Eastern Division, the company shall have constructed a branch line or lines running from a point or points in the said Eastern Division, the government shall, if at the expiration of the said lease, it shall determine to undertake the operation of the said Eastern Division, take over such branch line or lines as the company may elect not to retain, at such value as may be agreed upon, or as may, in case of failure so to agree, be determined in the manner provided by paragraph 24 (2) of the said Contract, which is hereby made applicable to cases arising under this paragraph. If any such branch line or lines shall have received any grant or grants under the provisions of any Act of the Parliament of Canada, the amount of such grant or grants, without interest, shall be deducted from such value

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and the difference only shall be payable by the government upon the taking over of such branch line or lines.

12. The said Contract, as modified by this agreement, is to be ratified by a general meeting of shareholders of the Grand Trunk Railway Company of Canada on or before the eighth day of March, 1904, and the deposit required by the twelfth paragraph of the said Contract is to be made in cash or approved securities immediately after such ratification.

13. Save as herein expressly provided, the said Contract and each and every paragraph and provision thereof are not to be deemed to be in any way affected by the provisions of this Supplemental Contract, but are hereby expressly confirmed and ratified, and the words and expressions which are defined in the said Contract shall, except as herein expressly varied, be held to have the same meaning herein as in the said Contract, and particularly and without in any way limiting the generality of the foregoing, the words and expressions, 'government,' 'company,' 'eastern division,' 'western division,' 'prairie section,' 'mountain section,' 'cost of construction,' and 'bonds,' shall have the same meaning herein as in the said Contract.

14. The thirty-fourth paragraph of the said contract is amended by substituting the word 'thirty-five' for the word 'twenty-five' in the twelfth line thereof.

15. This agreement shall be submitted to and be subject to ratification by the parliament of Canada.

In witness whereof, the said Henry Robert Emmerson, Minister of Railways, acting on behalf of His Majesty the King, hath hereunto set his hand and seal, and the said company represented herein by Sir Charles Rivers Wilson and others, have also set their hands and seals.

Signed, sealed and delivered by the Minister of Railways and Canals, in the presence of

JOSEPH PROULX.

HENRY ROBERT EMMERSON,
Minister of Railways and Canals.

L. K. JONES,
Secretary, Dept. of Railways and Canals.